

**THE COMMON COUNCIL OF THE CIVIL CITY OF NEW ALBANY,
INDIANA, WILL HOLD A REGULAR COUNCIL MEETING IN THE THIRD
FLOOR ASSEMBLY ROOM OF THE CITY/COUNTY BUILDING ON
MONDAY, AUGUST 6, 2007 AT 7:30 P.M.**

The meeting of the **New Albany City Council** was called to order by President Larry Kochert at 7:31 p.m. The meeting opened with the Lords Prayer and the Pledge of Allegiance.

MEMBERS PRESENT: Council Members Mr. Coffey, Mr. Schmidt, Mr. Price, Mrs. Crump, Mr. Gahan, Mr. Zurschmiede, Mr. Blevins, Mr. Messer and President Larry Kochert.

OTHERS: Council Attorney Jerry Ulrich and City Clerk Marcey Wisman.

ALSO: Mayor James Garner, Building Commissioner Ron Hartman and Board of Works member Matt Denison

APPROVAL OR CORRECTION OF THE FOLLOWING MINUTES:

Mr. Coffey moved to approve the budget hearing minutes from July 14th, Mr. Price second, all voted in favor.

Mr. Schmidt moved to approve the public hearing and regular meeting minutes of July 19th, Mr. Coffey second, all voted in favor except Mr. Kochert who abstained

APPROVAL OF CF-1 FORMS:

Rite Way Industries, Inc., Compliance with
Statement of benefits referencing R-04-11

Mr. Schmidt moved to approve, Mr. Coffey second, all voted in favor.

Discount Labels, Compliance with Statement
Of benefits referencing R-94-38 and R-00-31

Mr. Schmidt moved to approve, Mr. Messer second, all voted in favor.

COMMUNICATIONS – PUBLIC:

Mr. Kochert informed the public that G-07-12 will be tabled tonight and will not be discussed this evening.

Mr. Coffey stated that there is a committee that is meeting to discuss this and they have not had the opportunity to delve into it just yet.

Mr. Price asked if this would affect the injunction because Judge Cody was waiting to hear from the council on that.

Mr. Coffey explained that was in reference to R-07-30 and it wouldn't affect this and he explained that before they could repeal this they have to have an ordinance to replace it.

Valla Ann Bolavshak, stated that she wanted to discuss R-07-30 and the Stormwater Board in general. She stated that in 2006 she came to them and brought to their attention the alleged inappropriate spending by EMC and she thanks the council and Judge Cody for addressing this issue. She stated that she spoke with Mr. _____ and they are not required to set up a Stormwater Board and she discussed the requirements of Rule 13. She stated that even though they were required to come to the board for appropriations and they have only had one approved in the amount of \$54,000 and she wondered what other departments have spent money without it being appropriated.

Yvonne Kersey, 616 E. Main Street, spoke to R-07-30. She thanked Mr. Zurschmiede for going over the Sewer Contract and getting \$300,000 cut out of the contract, but she asked \$300,000 compared to what. She discussed issues in the downtown lines and the fact that they have not cleaned or televised.

Shirley Baird discussed the confusion over the passing of the new EMC Sewer Contract, such as why it was passed 6 months prior to the original contract expiring when one of the sewer board members that would be voting on it will not be returning. She explained that she understands that the City has been working with EMC for the last several years but that doesn't mean that there aren't other companies that could do the same work and the contract should have been bid out. She discussed concerns that she had with EMC and their history with the City as well as concerned with Mr. Zurschmiede who is the least experience Sewer Board member but was allowed to negotiate the contract.

Mickey Thompson apologized for saying that they had already received the order of injunction at the special meeting, but since then they have gone to court with Judge Cody and he issued a restraining order for the contract until the council has time to handle the situation. He discussed issues with the EMC contract and some misrepresentations that he believes were made as well as concerns with not having funding to hire enough employees to handle the workload and the fact that the Stormwater Board isn't acting in the best interest of City but in the best interest of EMC.

Dora Klinstiver, discussed issues she has with the fringe expansion. She reiterated the concerns that her and her husband discussed at the last meeting. She stated that Mr. Kraft, when asked what is going to happen when this is rezoned, stated that he did not know. However, at the July 17th Plan Commission meeting there was a PUD introduced for the area that she believes should have never been brought forth because the zoning hasn't changed yet.

Larry Waldaoetter, 1681 Longmeadow Drive, stated that he doesn't know anything about the contracts that they are dealing with, but that Jerry Taylor is the only person who has come out to his house to help take care of the water issues that he has.

Mrs. Crump stated that two and a half years ago she brought this issue to the council when they were discussing drainage money and nothing was ever done.

Joan Rose, 1683 Longmeadow, stated that she was the lady that Mrs. Crump spoke to about the problems on Longmeadow. She stated that she has at least a foot of water in her garage every time it rains. She explained that she spent over three thousand dollars to remedy this issue before she brought it to Mrs. Crump and Mr. Hunter and another city agent came out to look at her garage, recognized the issue but she never heard anything else from him. She stated that Mr. Taylor has come to her house three times over the last few months to propose solutions to her water issue and she asked the board to please find the money to help the individuals on Longmeadow.

Jerry Taylor, EMC, Stormwater Manager, discussed his employment experience and his responsibilities on the job. He discussed the job documentation that they have implemented since he has been with EMC. He also discussed how they are focused on bringing the best possible service to the City of New Albany and he stated that if anyone has any questions regarding the validity of what he says at this meeting that it is all documented and can be verified. He stated that they also document all the work that they do on any call-ins and explained the process once an individual calls in with any issue. He explained that the Stormwater Board is proposing that Tom Cannon go out onto the field and hire 5 employees to do maintenance and light construction for the same amount of money that they are currently paying two employees who won't get CDL license and prevent them from doing some of the work in house that they should be able to do.

Mr. Coffey asked about a situation where the workers had to sit for 4 hours while they waited for him to show up and weren't allowed to proceed with their work and he stated that they are only as good as their supervisor. He stated the money that they are spending is going into paper and not into the projects.

Mr. Taylor stated that with all due respect, Mr. Coffey was making accusations that he could not prove. He stated that they can look at any of the paper work that they have on the jobs that they are doing and they can show what kind of quality workmanship they bring to the City. He stated that he had never seen Mr. Coffey before on the day in question and he walked up to him and stated that he needed a back-hoe now, he explained that the two workers report to Tom Cannon and he typically doesn't get involved in that relationship. He stated once again that he doesn't mean any disrespect to the two employees in question and that they are hard workers but they just do not possess the skill set that they need to do the work that is required. He wanted to thank Mr. Schmidt for attending the Stormwater meetings and stated that he is not sure who the liaison is between the Council and the Stormwater Board.

Mr. Coffey stated that he speaks with Mr. Deatruck at least once or twice a week. He stated that he can call Mr. Taylor and may have to wait four hours for a return call.

Mr. Taylor stated that Mr. Coffey has never tried to call him and gave Mr. Coffey his card with his cell number on it. He explained that he would be glad to meet with any Council member that has an open mind to discuss with them the system they have in place. He stated that when they came into the situation with the City they had no call-in records and they have since implemented a log that they track all call-ins with and they respond to every single one. He explained that they were given \$54,000 from the Council to do work and over half of that was never used and they had to stop some of the work that they had started because of lack of funding.

Mr. Coffey stated that they Stormwater has money consistently coming in but that they never seem to have money to do the work. He stated that a Council first reading is not approval and he was told that the work was completed by Mr. Deatruck and that is something he has to take up with him.

Mr. Taylor stated that Councilman Gahan made a request for a project that they put out for bids. He invited them to all come down and visit them and encouraged them to make suggestions on how to make the process better but to at least take a look at what they have done for the City.

Mr. Gahan asked why they bid the project out.

Mr. Taylor stated that they put it out for competitive bid because all three contractors had been used repeatedly by EMC for sanitary sewers and their work was well documented and that they were local companies and had knowledge of the City.

Mr. Dixon addressed the board and stated that they bid the project out because they felt like the quality of work that needed to be done was beyond their experience at that time. He explained that they stopped work on the last three projects because of lack of funding. He stated that there is money in the budget for capital improvement projects and that is what they used to pay those particular projects and the board is still tracking their money to find out if they have funding for their projects before they get started and they will be done as they get money in house.

Mr. Paul Hurst spoke in favor of the Stormwater Board and EMC. He feels that they are doing a consciences job. He stated that the main problem that he sees is that there is no communication between this board and the Stormwater Board.

Maury Goldberg stated that he disagrees with Mr. Fifer's interpretation of the term "professional service". He stated that EMC has been here for 7 years and they have spent millions of dollars and they still can't see the light at the end of the tunnel and he believes they have wasted enough time and he believes that they need to get someone in that will do a better job for the City.

COMMUNICATIONS – CITY OFFICIALS:

Mr. Price stated that he keeps hearing that Floyd County has the lowest tax rate in the State of Indiana but that is not what he is hearing from the public. He asked Mr. Malysz if the money going to tax abatements is siphoning off money from the rest of the community.

Mr. Malysz explained how the process of tax abatements works and the process that they have to go through to get them. In the past tax abatements were offered as incentive to make the investment so in theory if the incentive wasn't offered ABC Company may not build the plant so it didn't have a direct impact on the assessed value. He stated that the 2000 legislation created tax abatements for situations where the City may have a vacant building that is located in an economic revitalization area and the mechanics of the new process does have an impact on the existing assessed value, which is the rental rate per square footage, because it ends up being a deduction to the value that is already on the books. He discussed the Boondocks resolution that he asked that they table and stated that based on information he received their deduction would be based on a rental rate of about \$4 -6 per square foot. He explained that the parameters that are in place and amount of the deduction are limited in terms of amount and duration. He explained to the council the different limitations and how they are used and how the deductions are calculated and what it means to each tax payer.

Mrs. Crump asked if he was bringing forward a new abatement that they might want to consider and she stated that the numbers that he quoted them on rentals seem to be a bit skewed to her.

Mr. Malysz stated that he got those numbers from a realtor that is versed in commercial and industrial properties and these are just quotes on properties that are available for rent. He explained that he used a cap rate to come up with the estimates.

Mrs. Crump asked if this would be an additional abatement that would be available on top of the abatements that they already have to offer.

Mr. Malysz said that yes this could be but he doesn't think there is any abatement on the property in question.

Mr. Price asked why individuals couldn't get abatement on their property because if they paid fewer taxes he believes they would put that money into fixing up their property.

Mr. Malysz stated because of the statutes that were created to insight economic development. He stated that the Council might want to put a committee together to review the statutes and what has been happening to better understand the abatement.

COMMUNICATIONS – MAYOR:

COMMITTEE REPORTS:

Jeff Gahan - No-bid Contract policies and procedures

Mr. Gahan stated that he wanted to say that this is not about EMC or any personalities involved but this is the council's attempt at trying to get a handle on money that is leaving the City. He informed everyone that they had a committee that was formed because of the contracts not being bid out and the issues with the budget getting out of control. He stated that they have a Sewer Board and a Drainage Board that are spending millions of dollars and not being accountable for their decisions in regards to bidding these contracts out and maintaining a budget. He explained that the committee meeting was attended by Mr. Coffey, Mr. Schmidt, Mr. Ulrich and himself and someone from the newspaper and the answers that they got back from the boards was that they do not have to bid out the contracts and the board decided to write a resolution as a sound remedy to a potentially long and damaging debate involving this issue and they recommend leaving this issue to the judge and the Council can proceed on to other business.

APPOINTMENTS:

INTRODUCTION OF ORDINANCES AND RESOLUTIONS:

READING

R-07-30	A Resolution Relating to Contracts for the Operation Of the New Albany Waste Water System and the New Albany Storm Water System by the Common Council of the City of New Albany	Coffey
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Mr. Coffey moved for the reading of R-07-30, Mr. Gahan second, the resolution was passed with five aye votes from Mr. Coffey, Mrs. Crump, Mr. Blevins, Mr. Gahan and Mr. Price 3 nay votes from Mr. Zurschmiede, Mr. Kochert, and Mr. Messer. Mr. Schmidt abstained.

Mrs. Crump asked if we vote on this tonight then the Judge will decide if it is a legitimate contract.

Mr. Gahan stated that this was correct.

Mr. Messer asked how the legal fees will be paid on this.

Mr. Coffey stated that the attorney fees will be far less than what they had to pay for the adult bookstore or even the bonus of \$100,000 that EMC will receive at the end of their contract if they do not have any problems with the EPA.

Mr. Zurschmiede explained that the \$100,000 was set as a carrot in order to get the sewer cleaning done; which hasn't been done in the past. He stated that he was upset with this Resolution because the Sewer board has already spent millions of dollars in attorney fees and this is just going to snowball into more than they have anticipated. He asked Mr. Ulrich if it was still his opinion that this contract should have been bid out.

Mr. Ulrich said yes.

Ms. Wisman read into the record a letter sent by Mr. Greg Fifer regarding the Sewer Utilities contract with EMC. Said letter is on file in the City Clerk's office.

Mr. Messer stated that he believes that the Sewer Board was in line with their contract with EMC because it is paid by a user fee. However, the Stormwater Board stepped out of line when they approved this contract without bidding it out because he does not believe the Stormwater fee is a user fee and the Council and the Mayor should have been informed before the decision was made.

Mr. Price stated that if EMC is doing a good job then he has no complaint about that but he has an issue with no competitive bidding which is done to keep it on an even playing field. He explained that when you have competitive bidding you are getting the best possible rate that any company has to offer.

Mr. Messer stated that he is not saying that contracts shouldn't be bid out when it comes to government funds but the Sewer Board is dealing with a user fee and he believes that is the difference.

Mrs. Crump asked Mr. Zurschmiede if there was a company that was hired to evaluate EMC.

Mr. Zurschmiede stated that it happened before he was a member of the Sewer Board but explained that it was a very thorough investigation into EMC and reported that they believed that EMC was doing a fantastic job for the City and have continued to decrease the number of sanitary sewer flows and that they are making steps towards being out

from under EPA scrutiny. He explained that they recommended that they keep the contract with EMC if possible. He stated that he asked the attorney if they had to bid it out because it was an estimated cost of \$70-100,000 to do so and Mr. Fifer said that they did not have an obligation to do so because it was a professional service contract. He explained the process that they went through in order to create the contract that was proposed and what negotiations took place to get a contract for \$500,000 less than what they were paying. He stated that he was naive enough to believe that the City would be happy that they were saving so much money and now they are just going to be paying and exorbitant amount in attorney fees for each board to resolve this issue.

Mr. Coffey reminded Mr. Messer that they are not just using user fees but also EDIT and TIF funds.

Mr. Messer stated that he was correct but that those funds were pledged by the Council to keep the user fee low.

Mr. Coffey stated that he has no doubt that Mr. Zurschmiede went at this with the best of intentions but he is still getting complaints and has photos of work that is sub par and issues that aren't getting addressed and he has a huge problem with the contract not being bid out. He stated that one thing that really bothers him is the fact that EMC received a blank check for their equipment.

Mr. Kochert asked what year the photos were from and stated that the Sewer Board has to approve any and all equipment that EMC purchases and they have to prove the need for it. He stated that they spent over \$1M in attorney's fees in one year and he doesn't think it is wise to go back to that way of doing business.

Mr. Coffey stated that they were promised sewer credits a long time ago and they are still lacking those.

Mr. Kochert stated that the EPA is responsible for that and if they would come to the meetings they would know why this was going on and stated that they did get a visit from the an agent with the Justice Department.

Mr. Blevins stated that people are still taking this personally, but he believes that they need to find out if the law was broken. He stated that there is an attorney stating that it was legal and an attorney stating that it was not legal and they will never know for sure unless they take it before a judge. He explained that he isn't arguing over the service of EMC but they don't know how much they could have saved if they had bid the contract out.

Mr. Kochert informed Mr. Blevins that if he would attend the meetings he would know the reasons why they approved the contract.

Mr. Blevins stated that Mr. Kochert was one of the ones that argued against take home police cars but he hasn't heard anything about the City vehicles that EMC uses and if the contract had been bid out they don't know if a new company would have come in with their own equipment and that could have freed up a lot of vehicles for the other departments to use instead of begging the council for funding to get new equipment. He stated that everything is all one sided and they should be representing everyone.

Mr. Kochert stated once again that if he had attended these meetings he would be up to date on what was going on with the contract and that he has never been to one Sewer Board meeting.

Mr. Blevins stated that they have two representatives that are supposed to keep the Council informed and asked how often they get reports from them.

Mr. Kochert stated that they get reports once a month and they fail to take the time to read them. He stated that these reports are very extensive and have all the information that they would need.

Mr. Blevins said again this isn't against EMC and they just need to determine if the law was broken when the contract was not bid out.

Mr. Schmidt stated that all he has heard from the community is what a good job EMC is doing.

Mrs. Crump stated that she doesn't think there is any question about the work that EMC has done but they as Council members have to look to their attorney who is telling them that he thinks this is wrong and they have to heed his advice because that is what they pay him for.

Mr. Zurschmiede asked Mr. Ulrich if it would be plausible to take the sewer utility off of the Resolution and keep the Stormwater issue on and see how it plays out in order to try and keep some of the attorney fees down if possible. He stated if they do this all at once he can see EMC suing the City for the contract.

Mr. Coffey stated that he is not going to amend the Resolution.

Mr. Ulrich stated that the simple answer is yes that it would reduce the cost and the contracts are essentially the same, but there are some differences between the two.

Mr. Messer stated that with all due respect the reason this is on here is because Mr. Ulrich is getting paid to do this as is all the other boards attorney's and his biggest concern is can they win because he can see the litigation being drug out for years.

Mr. Ulrich explained that whether or not it is "better" to separate these issues is up to the Council and he'll do whatever they instruct him to do but that Mr. Zurschmiede's point is well taken and it would speed up the process.

Mr. Coffey stated that there were Council members that were told that he would be assuring his vote for the Stormwater if they took off the sewer and he has never seen anything like this. He said the bottom line is if they are comfortable with it or not and he understands that some people are going about this for political reason but their attorney said he believes it is wrong and that is all they need to hear.

Mr. Summers stated that it was his understanding that these were service contracts and it is his opinion that they are not subject or required to be bid out by the statute.

Mr. Kochert called for a 5 minute recess at 10:04 p.m.

They returned from recess at 10:11 p.m.

A-07-21	An Ordinance Approving An Additional Appropriation For the Rainy Day Fund	Coffey 2&3
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Mr. Coffey called for the second and third readings of A-07-21, Mr. Schmidt second, all voted in favor. Bill A-07-21 became Ordinance A-07-34.

Z-07-13	Ordinance Amending the Code of Ordinances of New Albany Indiana, Title XV, Chapter 156 (Docket P-09-07: Brent Schroeder)	Zurschmiede 1
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Mr. Zurschmiede moved for the first reading of Z-07-13, Mr. Coffey second, all voted in favor.

Z-07-14	Ordinance Amending the Code of Ordinances of New Albany Indiana, Title XV, Chapter 156 (Docket P-10-07: LaFayette Square, LLC)	Zurschmiede 1
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Mr. Zurschmiede stated that this received and unfavorable recommendation from the plan commission.

Mr. Zurschmiede moved for the first reading of Z-07-14, Mr. Messer second, Z-07-14 failed with all voting nay except for Mr. Messer who abstained.

Z-07-15	Ordinance Amending the Code of Ordinances of New Albany Indiana, Title XV, Chapter 156 (Docket P-12-07: Storage Express Management, LLC)	Zurschmiede 1
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Mr. Zurschmiede moved for the first reading of Z-07-15, Mr. Coffey second, all voted in favor.

A-07-22	An Ordinance Amending Ordinance A-06-38 Setting The Salaries for the year 2007 for Non-Bargaining Unit Employees	Schmidt 2&3
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Mr. Schmidt called for the second and third reading of A-07-22, Mr. Blevins second, all voted in favor. Bill A-07-22 became ordinance A-07-35.

G-07-11	An Ordinance Separating the Accounts of the New Albany Sanitation Department and the New Albany Sewer Utility into Separate Funds	Zurschmiede2&3
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Mr. Zurschmiede moved for the second and third reading of G-07-11, Mr. Price second, all voted in favor. Bill G-07-11 became Ordinance G-07-36.

G-07-12	An Ordinance To Repeal Ordinance G-06-20 An Ordinance Establishing The New Albany Stormwater Drainage Board pursuant To Authority Granted By IC: 36-9-23, Et Seq	Coffey 2&3
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Mr. Coffey tabled G-07-12 to give the committee an opportunity to work out the amendments.

Z-07-10	Ordinance Amending the Code of Ordinances of New Albany, Indiana, Title XV, Chapter 156, (Docket A-01-07 – Fringe Expansion)	Zurschmiede3
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Mr. Zurschmiede moved for the third reading of Z-07-10, Mr. Messer second, Z-07-10 failed with Mr. Coffey, Mr. Schmidt, Mr. Price, Mr. Gahan, Mr. Blevins and Mr. Kochert voting nay and Mr. Zurschmiede, Mr. Messer and Mrs. Crump who voted aye.

Mr. Zurschmiede asked that Mr. Rosenbarger explain what exactly they are voting on tonight.

Mr. Rosenbarger gave a detailed explanation of the Ordinance to the board including a time frame for action.

Mr. Coffey asked if it was zoned as agricultural.

Mrs. Crump asked if just by setting the zoning classification they would still have to approve any planned unit development.

Mr. Rosenbarger stated that was correct.

Mr. Gahan asked if he had heard from the Stormwater Board.

Mr. Rosenbarger stated that he had not but that this was purely zoning.

Mr. Gibson stated that at this point in time this is in the fringe area and it is zoned as nothing and that bothers him because anything can go in there now.

Mr. Price stated that there is some great wildlife out in this area and he would like to keep it.

Mr. Messer asked that with what they just did it can become a junk yard.

Mr. Gibson stated that this is his fear.

Mr. Zurschmiede explained that had this Ordinance passed, their property would have been protected and since it didn't there is a potential that this PUDD that wants to go out there can come in, apply for a permit and start building.

Dr. Mark Randall, member of the County Plan Commission, stated that he is not opposed to this ordinance and properly done could be an asset to the community.

There was a lengthy discussion regarding this area and what can potentially go in there if they leave it unzoned.

MISCELLANEOUS COMMUNICATIONS: (public comments on non-agenda items)

Richard Duggins, NAFF, informed the council that they had a meeting with the fire fighters and presented the merit system ordinance and he has since gone out to each fire house and talked to all the crews and answered all their questions and they are all in favor of the Merit System Ordinance. He stated that the one they have in front of them has a change in Section D. He asked that this be on the agenda for the next meeting.

Mr. Messer asked that he be assigned to this item.

Mr. Ulrich stated that he has received a proposal for the redistricting but he forgot to bring it with him, but he will bring it over tomorrow.

ADJOURN:

There being no further business to be heard, the meeting adjourned at 10:49 p.m.

Larry Kochert, President
Common Council, City of New Albany

ATTEST: _____
Marcey J. Wisman, City Clerk